



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In The Matter of)
Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act 1992)
Rate Regulation)

MM Docket 92-266

CS Docket No. 96-60

Leased Commercial Access)

To: The Commission - **Mail Stop 1170**

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COMMENTS OF SHERJAN BROADCASTING CO., INC.

Sherjan Broadcasting Co., Inc. (Sherjan) comments herein on the "order on reconsideration of the first report and order and further notice of proposed rulemaking docket MM92-266, CS Docket No. 96-60. Sherjan is Licensee of WJAN-LP a low power station operating on channel 41 in Miami, Florida.

Sec. 612.147

Purpose: "To promote competition in the delivery of diverse sources of video programming and assure that the widest possible diversity of information sources are made available to the public from cable systems."

The FCC under the terms of the 1992 Act set the highest "implicit fee formula" with thought this would be the "highest reasonable rate" and that the cable company would negotiate the demand to arrive at market rates.

Section 612 e(2) further states "in any case in which the commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator the commission may also establish any further rule or order necessary to

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assure that the operator provides the diversity of information sources required by this section.”

The cable industry as a whole took the position of stonewalling independent producers, LPTV stations, and not wanting to recognize lease access (by stating the “system is full”) or quoting the highest implicit fee, with no negotiation thereby destroying any possibility of “Lease Access” in the United States. This has been and is the policy over the vast majority of cable systems since 1992. This established a pattern.

In light of the above we recommend that Paragraph 137 be modified. If the operator and the leased access programmer “LAP” cannot agree each should be allowed to appoint a CPA. The findings of the CPA should be received in a set amount of time, (i.e., 30 days). The LAP goes on the system at the requested rate. If it is determined that the operator priced the rates above a “good faith attempt” (10 to 15%). There should be penalties such as.

- a) Triple the amount the fee paid to the cable company paid back to the LAP.
- b) The cable operator pays for both CPA’s
- c) The cable operator be subject to fine by the commission.
- d) If price is correct LAP pays for both CPAs.

Section 612G “systems with 36 or more activated channels are available to 70% of households and are subscribed to the commission may promulgate any additional rules necessary to provide a diversity of information sources”.

Full power stations were all created as geographic equals and because of the large area cannot serve minorities, or smaller markets. LPTV was created to servethis vacumm. LPTV stations serving these segments of the population should be given priority in Leased Access because their service to the community. Conversely “must carry” stations and national networks should not be allowed Leased Access.

Because franchising authorities have the authority to require educational channels and the cable industry has acquiesced there is no need for additional educational channels and they should be treated as any other LAP

The desire for diversity of independent, local video programming has been the intent of Congress since 1984. The copyright laws were changed in order for cable to have free access to over-the-air signals. This is and was a subsidy for the cable industry. Part of the price for the free use of the broadcasters programming were the lease access channels to foster diversified video programming. Lease access has been legally in effect for twelve years. In 1992 Congress mandate was made even stronger and even under a strict mandate has been disregarded. Very, very few leased access channels which are presently being used because the cable has disregarded the law if not legally certainly the spirit.

The industry has waited a long time for this and the phase-in time should be short. now letting the marketplace have its effect. Phasing in as suggested would destroy the formula. If there must be a transition time it would be much fairer to put the formula into effect on one third of the required channels and phase in over an eighteen month period, 1/3 each six months.

The new formula does not cost cable anything and, in fact, would increase their profitability as the marketplace takes effect.

Cable keeps the fee from the subscriber for the service (usually around \$.50-\$.60) per channel) per month.

The "lost advertising revenue" is being reimbursed by the LAP (even though cable can put this advertising on another channel) However, only channels on the tier being affected should be counted.

A formula should be arrived at for part-time lease access to take into account the added costs for switching, which an operator does not have when an LAP leases a 24-hour channel.

COMMENTS ON FORMULA

The formula as written will work, it will accomplish the demand of Congress. It does not cost the cable industry anything and preserves its profits. in reality the "bumped" sales of the channels used for lease access will be moved to other channels as none of them are sold out.

If the Lease Access rates are too low - the channels will be used up and the marketplace will quickly come in play and rapidly the provider will receive the highest fee.

As the cable industry has been so adamant on Leased Access or must carry caveats have to be put in place. None of these punish cable unless the law is broken.

Congress wanted diversity "not another Fox network". diversity produced by a myriad of local programmers. There are literally hundreds of LPTV stations that produce local programming featuring all types of programming, as all News (Pittsburg), Spanish (Miami), Afro-American (Louisville), all News (Trenton, NJ), Tourist (New Orleans) and list goes on and on.

This could be the first time they can buy their way on cable.


The Telecommunications Act is very specific in lease access. Congress mandated it. The commission was to give a reasonable rate

Webster's Definition, reasonable: "fair, just, not excessive".

The "lease access" channels were to be used by independent producers since 1984 and most certainly since 1992. The programming put on there at the sufferance of Lease Access should not be the excuse to hold back lease access.

If Lease Access is successful bidding will drive the rate up. This new formula could be a correction of a great injustice.

Respectfully submitted.


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